

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

ERVIN STUBBS,

Plaintiff,

v.

K. PELKY, et al.,

Defendants.

Case No. 2:22-cv-121

HON. JANE M. BECKERING

MEMORANDUM OPINION AND ORDER

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983. The only claim remaining in the case concerns the alleged confiscation of a payment under the Consolidated Appropriations Act of 2021 (CAA), *see* 26 U.S.C. § 6428A(a)(1), by Defendants K. Pelky, Doug Tarson, Pete Chisholm, and R. McCarthy, who are Michigan Department of Corrections (MDOC) employees (collectively, “Defendants”). Defendants filed a motion for summary judgment, arguing that Plaintiff did not properly exhaust his administrative remedies for his CAA claim. The matter was referred to the Magistrate Judge, who issued a Report and Recommendation (R&R), recommending that this Court grant the motion and dismiss the claim without prejudice.¹ The matter is presently before the Court on Plaintiff’s objections to the Report and Recommendation, to which Defendants filed a response.² In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV.

¹ Alternatively, based on his review of the record, the Magistrate Judge indicated that the Court could dismiss the action with prejudice based on Plaintiff’s failure to state a plausible claim.

² On May 24, 2024, Plaintiff also submitted a 2-page filing titled a “Motion to Amend Complaint and Response to Defendants’ Motion to Dismiss Plaintiff’s Complaint” (ECF No. 61). Plaintiff did not attach an amended complaint to his filing for this Court’s review as required by W.D. Mich.

P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. The Court denies the objections and issues this Memorandum Opinion and Order.

In pertinent part, the Magistrate Judge determined that the Step I form for grievance MBP-22-03-525-01B did not name Defendants and that the grievance therefore could not have exhausted Plaintiff's CAA claim against them (R&R, ECF No. 58 at PageID.339). In his objections (ECF No. 59), Plaintiff does not identify—let alone demonstrate—any factual or legal error by the Magistrate Judge. Rather, Plaintiff merely queries how he can exhaust his administrative remedies (*id.* at PageID.343–346). Plaintiff's objections are therefore properly denied.

Accordingly, this Court will adopt the Magistrate Judge's Report and Recommendation as the Opinion of this Court. Because this Opinion and Order resolves the last pending claim, a Judgment will also be entered. *See* FED. R. CIV. P. 58. Because this action was filed *in forma pauperis*, this Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal of this decision would not be taken in good faith. *See McGore v. Wrigglesworth*, 114 F.3d 601, 610 (6th Cir. 1997), overruled on other grounds by *Jones v. Bock*, 549 U.S. 199, 206, 211–12 (2007). Therefore:

IT IS HEREBY ORDERED that the Objections (ECF No. 59) are DENIED and the Report and Recommendation of the Magistrate Judge (ECF No. 58) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that the Motion for Summary Judgment (ECF No. 36) is GRANTED.

LCivR 5.7(f). Additionally, as stated more fully by Defendants in their response (ECF No. 62), the motion is untimely and unduly prejudicial to Defendants. For these reasons, the Court determines, in its discretion, that the motion is properly denied.

IT IS FURTHER ORDERED that Plaintiff's "Motion to Amend Complaint and Response to Defendants' Motion to Dismiss Plaintiff's Complaint" (ECF No. 61) is DENIED.

IT IS FURTHER ORDERED that this Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this decision would not be taken in good faith.

Dated: June 10, 2024

/s/ Jane M. Beckering
JANE M. BECKERING
United States District Judge